

## Article 21A.

### Privacy of Employee Personnel Records.

#### **§ 115C-319. Personnel files not subject to inspection.**

Personnel files of employees of local boards of education, former employees of local boards of education, or applicants for employment with local boards of education shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the local board of education which employs an individual, previously employed an individual, or considered an individual's application for employment, and which information relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form.

Nothing in this section shall be construed to prevent local boards of education from disclosing the certification status and other information about employees as required by Section 1111(h)(6) of P.L. 107-110. (1987, c. 571, s. 1; 2002-126, s. 7.36.)

#### **§ 115C-320. Certain records open to inspection.**

(a) Each local board of education shall maintain a record of each of its employees, showing the following information with respect to each employee:

- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment.
- (4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the board has the written contract or a record of the oral contract in its possession.
- (5) Current position.
- (6) Title.
- (7) Current salary.
- (8) Date and amount of each increase or decrease in salary with that local board of education.
- (9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with that local board of education.
- (10) Date and general description of the reasons for each promotion with that local board of education.
- (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the local board of education. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the local board of education setting forth the specific acts or omissions that are the basis of the dismissal.
- (12) The office or station to which the employee is currently assigned.

(b) For the purposes of this section, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(c) Subject only to rules and regulations for the safekeeping of records adopted by the local board of education, every person having custody of the records shall permit them

to be inspected and examined and copies made by any person during regular business hours. The name of a participant in the Address Confidentiality Program established pursuant to Chapter 15C of the General Statutes shall not be open to inspection and shall be redacted from any record released pursuant to this section. Any person who is denied access to any record for the purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief. (1987, c. 571, s. 1; 2002-171, s. 4; 2007-508, s. 1; 2010-169, s. 18(b).)

**§ 115C-321. Confidential information in personnel files; access to information.**

(a) All information contained in a personnel file, except as otherwise provided in this Chapter, is confidential and shall not be open for inspection and examination except to any of the following persons:

- (1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment.
- (2) The superintendent and other supervisory personnel.
- (3) Members of the local board of education and the board's attorney.
- (4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file.
- (5) An innovative school operator and the Superintendent of the North Carolina Innovative School District if the school where the individual is employed has been selected as an innovative school as provided in Article 7A of this Chapter.
- (6) Any state or federal administrative agency that has a quasi-judicial function or any court of law, when disclosure is necessary in the discretion of the superintendent or superintendent's designee to adequately defend against a claim filed by a current or former employee against the local board of education or a school official or employee for any alleged act or omission arising during the course and scope of his or her official duties or employment. Such disclosure shall be limited to those confidential portions of the personnel file of the employee who filed the claim and only to the extent necessary for the defense of the board of education.

(a1) Notwithstanding any other provision of this Chapter, information contained in a personnel file that is relevant to possible criminal misconduct may be made available to law enforcement and the district attorney to assist in the investigation of:

- (1) A report made to law enforcement pursuant to G.S. 115C-288(g), or
- (2) Any report to law enforcement regarding an arson, attempted arson, destruction of, theft from, theft of, embezzlement from, embezzlement of any personal or real property owned by the local board of education.

(a2) The employee shall be given five working days prior written notice of any disclosure under subsection (a1) of this section to permit the employee to apply to the district court for an in camera review prior to the date of disclosure to determine if the information is relevant to the possible criminal misconduct. Failure of the employee to

apply for a review shall constitute a waiver by the employee of any relief under this subsection.

(a3) Statements or admissions made by the employee and produced under subsection (a1) of this section shall not be admissible in any subsequent criminal proceeding against the employee.

(b) Notwithstanding any other provision of this Chapter, any superintendent may, in his discretion, or shall at the direction of the Board of Education, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the local board of education or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the superintendent shall prepare a memorandum setting forth the circumstances which he and the board deem to require the disclosure and the information to be disclosed. The memorandum shall be retained in the files of the superintendent and shall be a public record.

(b1) Repealed by Session Laws 2016-108, s. 2(e), effective July 22, 2016.

(c) A public official or employee who knowingly, willfully, and with malice permits any person to have access to information contained in a personnel file, except as permitted by this section, is guilty of a Class 3 misdemeanor and upon conviction shall only be fined an amount not in excess of five hundred dollars (\$500.00).

(d) Any person, not specifically authorized by this section to have access to a personnel file, who shall knowingly and willfully examine in its official filing place, remove, or copy any portion of a personnel file shall be guilty of a Class 3 misdemeanor and upon conviction shall only be fined not in excess of five hundred dollars (\$500.00). (1987, c. 571, s. 1; 2005-321, s. 1; 2007-192, s. 1; 2008-194, s. 11(b); 2016-108, s. 2(e); 2016-110, s. 3; 2016-116, s. 1; 2017-57, ss. 7.26E(c), (f).)

**§ 115C-322. Reserved for future codification purposes.**